

US Application Ser. No. 10/619,721
Amendment dated January 29, 2007
Reply to Office Action of December 29, 2006

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REMARKS

Claims 1-52 are pending and subject to restriction and/or election requirement.

Election/Restriction

The Action stated that the instant application contains claims directed to the following patentably distinct species and requires restriction:

A: Bendable polymer:

- I: Fig. 2A
- II: Fig. 2C
- III: Fig. 2E

B: Additional material

- i. Biologically active agents and delivery material
- ii. Strength or rigidity imparting material
- iii. Radiopaque material
- iv. Material to alter resorption rate

The Action stated that the species are independent or distinct because they are separate embodiments that are not used together, they have different physical forms, and/or they have different modes of operation.

The Action stated that Applicant is required, pursuant to 35 U.S.C. §121, to elect a single disclosed species from EACH of the two groups (A AND B) for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. The Action stated that no claims are generic.

Applicant hereby elects, with traverse, to prosecute the species I and i. Applicant respectfully submits that Claims 1-42 and 45-52 are readable on the elected "I" species (Fig. 2A), and that Claims 1-12, 15-17, 19-30, 33-35, 37-43 and 47-52 are readable on the elected "i" species (biologically active agents and delivery material). Further, Applicant respectfully submits that claims 1-10, 14-17, 19-28, 33-35, 37-42 and 47-52 are generic.

Applicant traverses the election requirement. More exactly, Applicant traverses the position of the Office that the species named are separate embodiments that are not used together, that have different physical forms, and/or that have different modes of operation. In particular, Applicant submits that the same additional material incorporated to achieve a desired effect upon the physical properties of the composite implantable device may also affect its biologic properties. As an example, hydroxyapatite would not only improve the strength of the implant, but also be capable of, for example, extracting endogenous growth factors from the host tissue bed while functioning as a microporous conduit facilitating movement of interstitial fluid thorough out the


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isolated porosities of the device. See, for example, the last paragraph on page 29 of the specification.

Thus, the named species of additive material do not necessarily have different forms. Accordingly, the election requirement should be withdrawn. In the alternative, the election requirement should at least be withdrawn with respect to group B.

Should the Examiner deem that any further action on the part of Applicant would be desirable, the Examiner is invited to telephone Applicant's undersigned representative.

Respectfully submitted,


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